IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 1922 of 2004(A)

CC.135/2003 of CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE

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PETITIONER: ACCUSED NO.3

JYOTHIRANI D/O. VELAYUDHAN,
8/108, MELAKKAM, MANJERI,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: COMPLAINANT/STATE

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1. KALLARAMKETTIL SATHYAN,
S/O. RARICHAN, 'SYAMALA',
PUTHIYANGADI AMSOM DESOM, KOZHIKODE.

2. STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

3. DETECTIVE INSPECTOR, CBCID, KOZHIKODE.

R1 BY ADV. SMT.ARLISS TRENCY ANTONY
R2 & R3 PUBLIC PROSECUTOR SRI C.M. KAMMAPPU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.A. 8345/2004 IN CRL.M.C.1922/2004

DISMISSED.

13-9-2007. SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

V.K.MOHANAN, J.

CRL.M.C.NO. 1922 OF 2004.

Dated 13th September, 2007

ORDER

The petitioner herein is the 3rd accused in C.C.No.135/2003 on the file of the court of Chief Judicial Magistrate, Kozhikode. The above case was instituted upon the final report, which is marked as annexure C in this proceedings filed by the 3rd respondent. Counsel for the petitioner submitted that no offence is disclosed against the petitioner/A3 even if the entire allegations contained in annexure C report is admitted as true.

2. The allegation against the petitioner as well as other accused is that on 29-1-1994, the Ist accused conspired with accused Nos. 2 to 5 and registered a settlement deed assigning 10 cents of land situated in R.S.No.176/1 in favour of the Ist accused. The settlement deed was registered by Kozhikode Sub Registrar and while doing so, the 4th accused impersonated as de facto complainant before the Registrar. The further allegation is that on 17-7-96, the above property was given to the petitioner who is the 3rd accused as per settlement deed No.

WSRO/2131/96. So according to annexure C report, the accused including the petitioner herein committed the offences punishable under sections 406, 419, 464, 468, 471 and 120B read with 34 of IPC.

3. Originally, the FIR was registered in the Elathur police station as crime No.72/98 and subsequently, the investigation was taken over by 3rd respondent herein and the case was renumbered as 265/CR/01. After completing the investigation, the 3rd respondent filed annexure C final report before the Judicial Magistrate of the First Class Magistrate Court, Quilandy wherein the case was numbered as C.C.417/2003. Subsequently, the case was transferred to the Chief Judicial Magistrate's court, Kozhikode wherein the case was registered and renumbered as C.C.No.135/2003. It is seen in the memorandum of Crl.M.C. that initially, the petitioner herein appeared through her counsel before the JFCM Court, Quilandy and filed CMP 3306/2003 under section 239 of Cr.P.C. with a prayer to discharge the petitioner relieving her from all the charges levelled against her. But before considering the above petition, the matter was transferred to the Chief Judicial

Magistrate's Court, Kozhikode. The learned counsel for the petitioner submitted that thereafter she had filed annexure E petition before the CJM court Kozhikode with a prayer to discharge her, but without considering the said application on merit, the same was returned and insisted the presence of the petitioner before the court below. During the course of the argument, learned counsel appearing for the petitioner submitted that he will be satisfied by a direction to the court below to consider the request of the petitioner for a discharge under section 239 of Cr.P.C.

4. I have also heard the learned Public Prosecutor who opposed the prayer of the petitioner to quash the proceedings against her. The Public Prosecutor had fairly submitted that a direction can be given to the court below to consider the application of the petitioner for a discharge under section 239 of Cr.P.C.

5. Considering the seriousness of the allegations contained in annexure C report, but at the same time, the fact disclosed through annexure F request of the de facto complainant, I am of the view that this Court need not go into the merits and

demerits of the prosecution allegation, but the request of the petitioner for discharge can be directed to be considered under section 239 of Cr.P.C. Now, all the materials are available before the court below which can be considered under section 239 of Cr.P.C. The petitioner being a lady and, especially, when she has a case that she is in no way involved in the commission of the offence, it is just and proper for the court below to consider the above request based upon the available materials and the court can come into a definite conclusion whether a charge will lie against the petitioner. For considering the said request for discharge under section 239 of Cr.P.C., the physical presence of the petitioner is not necessary and she can be exempted from personal appearance and she can be heard through her counsel.

6. In the above circumstances, the court below is directed to consider the application, which will be filed by the petitioner under section 239 Cr.P.C. within one month from the date of receipt of copy of this order and to dispose of the same on merits in accordance with law within another month from the date of filing such application and till the consideration and

disposal of such application, her personal appearance will be exempted on her filing a petition under section 205 Cr.P.C. The petitioner is directed to produce the copy of this order before the court immediately on getting the same from this Court

With the above observation and directions, Crl.M.C. is dismissed.

V.K.MOHANAN, JUDGE.

Kvm/

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: